

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

8:17CR323

vs.

JORY ANAYA,

Defendant.

ORDER

This matter is before the Court on Defendant's Motion to Take Deposition. ([Filing No. 17](#).) Defendant seeks to depose the victim in this case pursuant to Federal Rule of Criminal Procedure 15. In support of his motion, Defendant only states that the deposition will assist him in preparing his case. The government opposes the motion.

Federal Rule of Criminal Procedure 15 allows a party to "move that a prospective witness be deposed in order to preserve testimony for trial. The court may grant the motion because of exceptional circumstances and in the interest of justice." [Fed. R. Crim. P. 15\(a\)](#). "To establish exceptional circumstances, the moving party must show the witness's unavailability and the materiality of the witness's testimony." [United States v. Liner](#), 435 F.3d 920, 924 (8th Cir. 2006). The primary purpose of Rule 15 is "preservation of evidence for use at trial." [United States v. Adcock](#), 558 F.2d 397, 406 (8th Cir. 1977). Rule 15 is not meant "to provide a method of pretrial discovery." [Id.](#)

Defendant has not demonstrated that the deposition is necessary to preserve evidence or testimony, nor has he shown that exceptional circumstances warrant the deposition. The proposed deponent's statement was previously provided to defense counsel during discovery, and there is no indication that the deposition will produce exculpatory evidence. *See United States v. Kelley*, 36 F.3d 1118, 1125 (D.C. Cir. 1994) ("Moreover, there is typically some showing, beyond unsubstantiated speculation, that the evidence exculpates the defendant"). Also, there is no evidence that the proposed deponent will be unavailable for trial. Defendant's general

assertion that the deposition will help him prepare his case does not justify a deposition under Rule 15.

Accordingly,

IT IS ORDERED that Defendant's Motion to Take Deposition ([Filing No. 17](#)) is denied.

Dated December 7, 2017.

BY THE COURT:

S/ Susan M. Bazis
United States Magistrate Judge